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TAGS: PHUM, UNHRC-1
SUBJECT: COMMUNICATION FROM WG ARBITRARY DETENTION REGARDING
ALLEGED DETENTIONS IN SECRET PRISONS

1. Mission received the following communication from Leila Zerrougui, Chairperson/Rapporteur of the Working Group on Arbitrary Detention, regarding 28 persons allegedly detained in secret prisons. This communication has been forwarded to IO/SHA via e-mail and is number 41 on the Geneva 2005 Communications Log.

2. Begin text of letter:

REFERENCE: G/SO 218/2

8 December 2005

Dear Mr. Ambassador,

The Commission on Human Rights, by resolution 2003/31 entitled "Question of arbitrary detention", decided to renew, for a three-year period, the mandate of the Working Group on Arbitrary Detention. The mandate was confirmed by resolution 2005/28. It is in my capacity of Chairperson/Rapporteur of the Working Group that I am addressing the present letter to you.

I wish to draw your Government's attention to a communication which was submitted to the Working Group on Arbitrary Detention, concerning the detention of 28 persons in supposed secret prisons or "black sites" outside territories under the jurisdiction of the United States of

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America. A summary of the communication is attached to the present letter.

In order to be able to render an opinion with respect to the cases reported to it, the Working Group would appreciate receiving any information which your Government may wish to provide regarding these cases, and in particular, information on the allegations made therein, both in respect of the facts and the applicable legislation. The Working Group would be grateful if you could provide it with a reply at your earliest convenience, and not later than 90 days from the date of transmittal of the present letter, so as to facilitate its task of investigating the cases. Nevertheless, should your Government wish that this deadline be extended, the Working Group would be grateful if you could inform it, within the 90-day deadline, of the reasons for that request in order to extend the deadline.

Please accept, dear Mr. Ambassador, the assurances of my highest consideration.

Leila Zerrougui
Chairperson/Rapporteur Working Group on Arbitrary Detention

End text of letter.

3. Begin text of attachment:

UNITED STATES OF AMERICA

1. The Working Group on Arbitrary Detention has received reports from reliable sources and through different individual communications, about the existence of secret prisons or "black sites" around the world where detainees are being held in unknown and uncontrolled conditions. These detention facilities have allegedly been established since March 2002 in South-eastern Asia, Eastern Europe, and Northern Africa, in the context of the so-called "global war on terror".

2. According to the allegations received, some of these secret detention facilities, located outside territories under United States jurisdiction, are administered by agents of the United States Central Intelligence Agency (CIA), who are applying CIA's approved enhanced or harshest interrogation techniques, which are allegedly contrary to international conventions and even to the United States military law. They include tactics such as "water-boarding", in which a detainee is made to believe he or she is drowning.

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3. It was also reported that the United States intelligence services have also ships some detainees to countries that use interrogation techniques to extract confessions harsher than any authorized for use by United States intelligence officers. These detainees were not necessarily citizens of those nations. Secret jails in these countries are operated by the host nations, with CIA financial assistance and, sometimes, direction.

4. It was further reported that those detainees were taken from one country to another country on flights which have duration of three to eight hours, stayed there for periods ranging from 18 months to more than 2 years, and transferred again to a third country. Some of the detainees were moved from Afghanistan and Middle East countries to Eastern Europe in a small fleet of private jets used by the CIA.

5. Allegations were also received regarding the existence of a related system of secretly returning prisoners to their home country when they have outlived their usefulness to the United States. Algerians, Chinese nationals, Egyptians, Jordanians, Moroccans, Pakistanis, Saudis, Tunisians and Uzbekistanis were reportedly returned to their countries' intelligence services after initial debriefing by United States intelligence officers.

6. The transfer practice, also known as "rendition" or "extraordinary rendition", is supposed to be a counter-terrorism technique. Detainees are held in order to continue detention and interrogation, and to exchange information with foreign intelligence agents conducting the interrogations.

7. Some of these detention centres were located in former Soviet air or military bases. Former detainees held in these secret detention facilities relate that they were not formally charged of any crime, nor brought before any authority, administrative or judicial, responsible for their detention to contest the legality of it. They were held in incommunicado detention, not having access to the outside world and could not access neither their families -who have had no idea of their whereabouts- nor defence lawyers. They were not allowed to speak to no one but the interrogators. They were also forced to listen to loud music day and night. Some detainees were kept in dark and underground cells.

8. Concern was expressed that these transfers occur outside the confines of any legal procedure, such as deportation or extradition, and do not allow access to counsel or to any

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judicial body to contest the transfer.

9. According to the information received by the Working Group, many of the detainees listed below are being held in secret prisons or "black sites" located outside territories under the jurisdiction of the United States of America. Many of them are suspected of involvement in serious crimes, including the 11 September 2001 attacks; the 1998 United States Embassy bombings in Kenya and Tanzania, and the 2002 bombing at two nightclubs in Bali, Indonesia. Yet none on this list has been arraigned or criminally charged, and United States Government officials have reportedly suggested that some detainees have been tortured or seriously mistreated in custody.

10. The current location of these prisoners is unknown. The list of persons in detention is the following:

10.1 Mr. Ibn Al-Shaykh al-Libi. Reportedly arrested on 11 November 2001 in Pakistan. Libyan, suspected commander at al-Qaeda training camp.

10.2 Mr. Abu Faisal. Reportedly arrested on 12 December 2001. Nationality unknown.

10.3 Mr. Abdul Aziz. Reportedly arrested on 14 December 2001. Nationality unknown. In early January 2001, Kenton Keith, a spokesman at the U.S. Embassy in Islamabad, produced a chart with the names of senior al-Qaida members listed as killed in action, detained, or on the run. Faisal and Aziz were listed as detained on 12 and 14 December 2001.

10.4 Mr. Abu Zubaydah (also known as Zain al-Abidin Muhahhad Husain). Reportedly arrested in March 2002 in Faisalabad, Pakistan. Palestinian; born in Saudi Arabia; suspected senior al-Qaida operational planner.

10.5 Mr. Abdul Rahim al-Sharqawi (alias Riyadh the facilitator). Reportedly arrested in January 2002. Possibly Yemeni, suspected al-Qaida member (possibly kept previously in Guantanamo).

10.6 Mr. Abd al-Hadi al-Iraqi. Reportedly arrested in January 2002. Nationality unknown, presumably Iraqi. Suspected commander of an al-Qaida training camp.

10.7 Mr. Muhammed al-Darbi. Reportedly arrested in August 2002. Yemeni, suspected al-Qaida member. On 26 December 2002, citing "U.S. intelligence and national security officials," the Washington Post reports that al-Darbi, as

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well as Ramzi Binalshibh [see below], Omar al-Faruq [reportedly escaped from U.S. custody in July 2005], and Abd al-Rahim al-Nashiri [see below] all "remain under CIA control."

10.8 Mr. Ramzi bin al-Shibh. Reportedly arrested on 13 September 2002. Yemeni. Suspected al-Qaida conspirator in September 11 attacks (former roommate of one of the hijackers).

10.9 Mr. Abd al-Rahim al-Nashiri (or Abdulrahim Mohammad Abda al-Nasherii), (alias Abu Bilal al-Makki or Mullah Ahmad Belal). Reportedly arrested in November 2002 in the United Arab Emirates. Saudi or Yemeni. Suspected al-Qaida chief of operations in the Persian Gulf, and suspected planner of the USS Cole bombing and of the attack on the French oil tanker, Limburg.

10.10 Mr. Mohammed Omar Abdel-Rahman (alias Asadullah). Reportedly arrested in February 2003 in Quetta, Pakistan. Egyptian, son of the Sheikh Omar Abdel-Rahman, who was convicted in the United States of involvement in terrorist plots in New York. See Agence France Presse, 4 March 2003: "Pakistani and US agents captured the son of blind Egyptian cleric Omar Abdel Rahman. . . a US official said Tuesday. Muhamad Abdel Rahman was arrested in Quetta, Pakistan, the official said, speaking on condition of anonymity." David Johnston, New York Times, 4 March 2003: "On February 13, when Pakistani authorities raided an apartment in Quetta, they got the break they needed. They had hoped to find Mr. [Khalid Sheikh] Mohammed, but he had fled the apartment, eluding the authorities, as he had on numerous occasions. Instead, they found and arrested Muhammad Abdel Rahman, a son of Sheik Omar Abdel Rahman, the blind Egyptian cleric..."

10.11 Mr. Mustafa al-Hawsawi (alias al-Hisawi). Reportedly arrested on 1 March 2003 (together with Khalid Sheikh Mohammad) in Pakistan. Saudi. Suspected al-Qaida financier.

10.12. Mr. Khalid Sheikh Mohammed. Reportedly arrested on 1 March 2003 in Rawalpindi, Pakistan. Kuwaiti (Pakistani parents). Suspected al-Qaida member; alleged to have masterminded September 11 attacks; the killing of Daniel Pearl and the USS Cole attack in 2000.

10.13. Mr. Majid Khan. Reportedly arrested on March-April 2003 in Pakistan. Pakistani. Alleged link to Khalid Sheikh Mohammad; alleged involvement in a plot to blow up gas stations in the United States. Details about Khanf's arrest

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were revealed in several media reports, especially in Newsweek: Evan Thomas, "Al Qaeda in America: The Enemy Within," Newsweek, 23 June 2003. U.S. prosecutors provided evidence that Majid Khan was in U.S. custody during the trial of 24-year-old Uzair Paracha, who was convicted in November 2005 of conspiracy charges, and of providing material support to terrorist organizations.

10.14. Mr. Yassir al-Jazeeri (alias al-Jaziri). Reportedly arrested on 15 March 2003 in Pakistan. Possibly Moroccan, Algerian, or Palestinian. Suspected al-Qaida member; linked to Khalid Sheikh Mohammed. Details of arrest reported: Alex Spillius, "FBI Questions al-Qaeda Man in Pakistan," Daily Telegraph, 17 March 2003; Paul Haven, "Al-Qaida suspect begins cooperating with authorities, Pakistani security officials say," Associated Press, 17 March 2003.

10.15. Mr. Ali Abdul Aziz Ali (alias Ammar al Baluchi). Reportedly arrested on 29 April 2003 in Karachi, Pakistan. Pakistani. He is alleged to have funneled money to September 11 hijackers, and alleged to have been involved with the Jakarta Marriott bombing and in handling Jose Padilla's travel to the United States. U.S. Judge Sidney Stein ruled that defense attorneys for Uzair Paracha could introduce statements Baluchi made to U.S. interrogators, proving that he was in U.S. custody. Former Deputy Attorney General James Comey also mentioned Baluchi during remarks to the media about the case of Jose Padilla on 1 June 2004

10.16. Mr. Waleed Mohammed bin Attash (alias awfiq bin Attash or Tawfiq Attash Khallad). Reportedly arrested on 29 April 2003 in Karachi, Pakistan. Saudi (of Yemeni descent). Suspected of involvement in the bombing of the USS Cole in 2000, and the September 11 attacks. See Afzal Nadeem, "Pakistan Arrests Six Terror Suspects, including Planner of September 11 and USS Cole Bombing," Associated Press, 30 April 2003. His brother, Hassan Bin Attash, is reportedly held in Guantanamo. President Bush described his arrest as a "major, significant find" in the war against terrorism: "He's a killer. He was one of the top al-Qaida operatives.... He was right below Khalid Shaikh Mohammad on the organizational chart of al-Qaida. He is one less person that people who love freedom have to worry about." David Ensor and Syed Mohsin Naqvi, "Bush Hails Capture of Top al Qaeda Operative," CNN.com, 1 May 2003.

10.17. Mr. Adil al-Jazeeri. Reportedly arrested on 17 June 2003 outside Peshawar, Pakistan. Algerian, suspected al-Qaida and longtime resident of Afghanistan; alleged "leading member" and "longtime aide to bin Laden." (Previously kept

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in Guantanamo).

10.18. Mr. Hambali (alias Riduan Isamuddin). Reportedly arrested on 11 August 2003 in Thailand. Indonesian; allegedly involved in Jemaah Islamiyah and al-Qaida; alleged involvement in organizing and financing the Bali nightclub bombings, the Jakarta Marriot Hotel bombing, and preparations for the September 11 attacks.

10.19. Mr. Mohamad Nazir bin Lep (alias Lillie, or Li-Li). Reportedly arrested in August 2003 in Bangkok, Thailand. Malaysian, Alleged link to Hambali.

10.20. Mr. Mohamad Farik Amin (alias Zubair). Reportedly arrested in June 2003 in Thailand. Malaysian; alleged link to Hambali. For more information on the arrest of Mohammad Farik Amin and Mohamad Nazir bin Lep, see: Kimina Lyall, "Hambali Talks Under Grilling-Slaughter of Innocents," The Australian, 21 August 2003; Kimina Lyall, "Hambali Moved JI Front Line to Bangladesh, Pakistan," The Weekend Australian, 27 September 2003; Simon Elegant and Andrew Perrin, "Asia's Terror Threat," Time Asia Magazine, 6 October 2003; Simon Elegant, "The Terrorist Talks," Time, 13 October 2003.

10.21. Mr. Tariq Mahmood. Reportedly arrested in October 2003 in Islamabad, Pakistan. Dual British and Pakistani nationality. Alleged to have ties to al-Qaida. See "Pakistan grills detained British al-Qaeda suspect," Agence-France Presse, 10 November 2005; Sean O'Neill, "Five still held without help or hope; Guantanamo," The Times, 12 January 2005.

10.22. Mr. Hassan Ghul. Reportedly arrested on 23 January 2004, in Kurdish highlands, Iraq. Pakistani; alleged to be Zarqawi's courier to bin Laden; alleged ties to Khalid Sheikh Mohammad. President Bush described Hassan Ghul's arrest on 26 January 2004, in comments to the press, Little Rock, Arkansas: "Just last week we made further progress in making America more secure when a fellow named Hassan Ghul was captured in Iraq. Hassan Ghul reported directly to Khalid Sheikh Mohammad, who was the mastermind of the September 11 attacks.... He was captured in Iraq, where he was helping al Qaida to put pressure on our troops."

10.23. Mr. Musaad Aruchi (alias Musab al-Baluchi, al-Balochi, al-Baloshi). Reportedly arrested in Karachi on 12 June 2004 in a "CIA-supervised" operation. Presumably Pakistani. Pakistani intelligence officials told journalists Aruchi was held by Pakistani authorities at an airbase for three days, before being handed over to the United States

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and then flown in an unmarked CIA plane to an undisclosed location. Anwar Iqbal, "Pakistan Hands Over 1998 Bomber to US," United Press International, 3 August 2004. See also Zahid Hussain, "Pakistan Intensifies Effort Against al Qaeda," The Asian Wall Street Journal, 5 August 2004; Bill Powell, "Target: America," Time Magazine, 16 August 2004, Vol. 164, Issue 7; "Pakistani Aides: Al-Qaida Arrest in June Opened Leads," Dow Jones International News, 3 August 2004; "CIA-supervised arrest in Pak opened valuable leads: Report," The Press Trust of India, 3 August 2004.

10.24. Mr. Mohammed Naeem Noor Khan (aka Abu Talaha). Reportedly arrested on 13 July 2004 in Pakistan. Pakistani, computer engineer, was held by Pakistani authorities, and likely transferred to U.S. custody. See Douglas Jehl and David Rohde, "Captured Qaeda Figure Led Way to Information behind Warning," New York Times, 2 August 2004. Kamran Khan, "Al Qaeda Arrest In June Opened Valuable Leads," Washington Post, 3 August 2004; Kamran Khan and Dana Priest, "Pakistan Pressures Al Qaeda; Military Operation Results In Terror Alert and Arrests," Washington Post, 5 August 2004; "Pakistan questioning almost 20 Al-Qaeda suspects," Agence-France Presse, 5 August 2005; Robert Block and Gary Fields, "Al Qaeda's Data on U.S. Targets Aren't New: Surveillance of Listed Sites In Eastern Cities Took Place Over Time, Perhaps Years," The Asian Wall Street Journal, 7 August 2004; Adrian Levy and Cathy Scott-Clark, "One Huge U.S. Jail," The Guardian, 19 March 2005.

10.25. Mr. Ahmed Khalfan Ghailani. Reportedly arrested on 24 July 2004 in Pakistan. Tanzanian. Reportedly indicted in the United States for 1998 embassy bombings. U.S. and Pakistani intelligence officials told UPI that Ghailani was transferred to "CIA custody" in early August. See Anwar Iqbal, "Pakistan Hands Over 1998 Bomber to US," United Press International, 3 August 2004. Pakistani security officials told AFP and Reuters in January 2005, that Ghailani was handed over to the United States "several months ago." See e.g., "Pakistan hands Tanzanian Al-Qaeda bombing suspect to US," Agence France Presse, 25 January 2005.

10.26. Mr. Abu Faraj al-Libi. Reportedly arrested on 4 May 2005, in North Western Frontier Province, Pakistan. Libyan, suspected al-Qaida leader of operations; alleged mastermind of two assassination attempts on Musharraf. Col. James Yonts, a U.S. military spokesman in Afghanistan, "said in an email to The Associated Press that al-Libbi was taken directly from Pakistan to the U.S. and was not brought to Afghanistan."

10.27. The source adds that this system of secret prisons

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began with the transfer of Mr. Abu Zabayda from Pakistan to Thailand, where he was housed in a small disused warehouse in an active airbase. After treatment there for gunshot wounds by a CIA doctor especially sent from the CIA headquarters to assure Mr. Zubaydah was given proper care, he was slapped, grabbed, made to stand long hours in a cold cell and finally handcuffed and strapped feet up to a water board until after 31 seconds he begged for mercy and began to cooperate.

10.28. Mr. Ramzi Binalshibh was also captured in Pakistan and flown to Thailand.

11. It was reported that this alleged hidden global internment network is a central element in the CIA's unconventional war on global terrorism. It depends on the cooperation of foreign intelligence services. Concern was expressed that the existence of these secret sites of detention where no legal control or human rights protection can be exercised, facilitates avoiding the international obligations and responsibilities of the Governments who are running them. It is also well known that secret detention without any legal control augments for the detainee the practice of torture and other cruel, inhuman or degrading treatment especially when under interrogation.

12. It was alleged that the pattern of this type of arbitrary deprivation of liberty, lacking any legal basis, is against international human rights law and implies more gross violations of detainees rights: forced disappearance; lack of access to lawyers, families, doctors; to have families informed of place of arrest and detention; the right to be free from torture and cruel, inhuman or degrading treatment, which are against the standards of international law.

13. It was further stressed that detaining terrorist suspects under such conditions, without charging them and without the prospect of a trial in which their guilt or innocence will eventually be established, is in itself a serious denial of their basic human rights and is incompatible with both International Humanitarian Law and Human Rights Law.

14. The Working Group would appreciate if the Government could provide it with detailed information about the existence and legal basis for the establishment of the secret prisons or "black sites" above-referred and about the current situation of the above-mentioned 30 persons and to give clarification about the legal provisions to justify his

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continued detention.

End text of attachment.

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